

WC 04-406

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October 26, 2004

**VIA HAND DELIVERY**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Wireline Competition Bureau  
P.O. Box 358145  
Pittsburgh, PA 15251-5145

FED-MELLON

OCT 26 2004

Re: **In the Matter of the Joint Application of ICG Telecom Group, Inc. and Mpower Communications Corp. for Approval to Transfer Certain Customers and Assets**

Dear Ms. Dortch:

On behalf of ICG Telecom Group, Inc. ("ICG") and Mpower Communications, Corp. ("Mpower"), enclosed please find an original and six (6) copies of an application for Commission approval to transfer certain customers and assets of ICG to Mpower. Pursuant to Section 63.04(b) of the Commission's rules, Applicants submit this filing as a combined domestic section 214 transfer application and international section 214 transfer application ("Combined Application"). Applicants are simultaneously filing the Combined Application electronically via the International Bureau's Electronic Filing System ("MyIBFS").

Also enclosed is a completed Fee Remittance Form 159 containing a VISA credit card number and expiration date for payment, in the amount of \$895.00, to the Federal Communications Commission, which satisfies the filing fee required for this Application under line 2.b of Section 1.1105 of the Commission's rules.

Please date-stamp the enclosed extra copy of this filing and return it in the envelope provided. Please do not hesitate to contact us if you have any questions regarding this filing.

Respectfully submitted,

*Douglas D. Orvis II /ms*

Catherine Wang  
Douglas D. Orvis II

Cc: Kathleen Greenan-Ramsey, Esq.  
Scott Beer, Esq.  
Russell I. Zuckerman, Esq.

Enclosure



FEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICE

(1) LOCKBOX #  358145		SPECIAL USE ONLY	
		FCC USE ONLY	
SECTION A - PAYER INFORMATION			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Swidler Berlin Shereff Friedman, LLP		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) \$895.00	
(4) STREET ADDRESS LINE NO. 1 3000 K Street, N.W. Suite 300			
(5) STREET ADDRESS LINE NO. 2			
(6) CITY Washington		(7) STATE DC	(8) ZIP CODE 20007
(9) DAYTIME TELEPHONE NUMBER (include area code) 202-424-7500		(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) 0004-3539-00		(12) FCC USE ONLY	
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME Mpower Communications Corp.			
(14) STREET ADDRESS LINE NO. 1 175 Sully's Trail			
(15) STREET ADDRESS LINE NO. 2 Suite 300			
(16) CITY Pittsford		(17) STATE NY	(18) ZIP CODE 14534
(19) DAYTIME TELEPHONE NUMBER (include area code) (585) 218-6550		(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN) 0003-7331-02		(22) FCC USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE CUT	(25A) QUANTITY 1	
(26A) FEE DUE FOR (PTC) \$895.00	(27A) TOTAL FEE \$895.00	FCC USE ONLY	
(28A) FCC CODE 1		(29A) FCC CODE 2	
(23b) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY	
(28B) FCC CODE 1		(29B) FCC CODE 2	



**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

\_\_\_\_\_  
In the Matter of )

ICG Telecom Group, Inc., )  
Assignor )

and )

Mpower Communications Corp., )  
Assignee )

Application For Authority Pursuant to Section )  
214 of the Communications Act of 1934, )  
as Amended, for the Assignment of Assets of )  
an Authorized U.S. International and Domestic )  
Communications Common Carriers )  
\_\_\_\_\_

File No. ITC-T/C-2004 \_\_\_\_\_

WC Docket No. 04 \_\_\_\_\_

**APPLICATION**

**I. INTRODUCTION**

**A. Summary of Transaction**

ICG Telecom Group, Inc. ("ICG") and Mpower Communications Corp. ("Mpower") (together, the "Applicants"), through their undersigned counsel and pursuant to Section 214 of the Communications Act, as amended, 47 U.S.C.A. § 214, and Sections 63.04 and 63.24(e) of the Commission's rules, 47 C.F.R. §§ 63.04 & 63.24(e), hereby respectfully request that the Commission grant authority, to the extent it deems it required, for a transaction wherein ICG will assign substantially all of its assets, including customers, located in the State of California, to Mpower.



The transaction will allow customers in California to receive service from Mpower, a CLEC and IXC with super-regional emphasis on California, and ICG will receive additional operating capital, which will aid in the provision of service to ICG's remaining customers. As described below, it is not anticipated that the proposed transaction will result in any change in the rates, terms, or conditions of the services provided to existing ICG customers in California. The proposed transactions will therefore serve the public interest.

**B. Request for Expedited Consideration**

Expeditious grant of Commission approval is crucial to this transaction. In order to maintain the value of the existing California customer base, the Applicants have an urgent need to complete the proposed transaction. Accordingly, Applicants respectfully request that the Commission act upon this Application expeditiously in order to allow the proposed transaction to be consummated as soon as possible.

**C. Joint Application is Eligible for Streamlined Processing**

Applicants respectfully submit that this Application is eligible for streamlined processing pursuant to Sections 63.03 and 63.12 of the Commission's Rules, 47 C.F.R. §§ 63.03 & 63.12. With respect to the domestic authority, this Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) because, immediately following the transactions: (1) Applicants and their affiliates (as defined in Section 3(1) of the Communications Act – "Affiliates") combined will hold less than a ten percent (10%) share of the interstate, interexchange market; (2) to the extent that Applicants or their Affiliates provide U.S. local exchange services or exchange access services, those services are provided only in geographic areas served by a dominant local exchange carrier that is not a party to the transaction; and (3) none of the Applicants or their Affiliates are dominant with respect to any U.S. domestic



telecommunications service. With respect to international authority, this Application is eligible for streamlined processing pursuant to Section 63.12(a)-(b) of the Commission's Rules, 47 C.F.R. § 63.12(a)-(b). In particular, Section 63.12(c)(1) is inapplicable because none of the Applicants is affiliated with any foreign telecommunications carriers except for foreign telecommunications carriers that qualify for a presumption of non-dominance pursuant to Section 63.10(a)(3) of the Commission's Rules, and none of the scenarios outlined in Section 63.12(c)(2)-(4) of the Commission's Rules applies.

In support of this Application, Applicants states as follows:

## **II. DESCRIPTION OF APPLICANTS**

### **A. ICG Telecom Group, Inc. (Assignor)**

ICG offers a range of resold and facilities-based services, including service over a managed fiber-optic network, with numerous points of presence nationwide, including coverage over 4,000 rate centers. ICG's service offerings include local and long distance telecommunications services, data services, and other communications solutions. ICG's services are primarily offered to all businesses, Internet service providers ("ISPs"), interexchange carriers, and other telecommunications carriers.

### **B. Mpower Communications Corp. (Assignee)**

Founded in 1996, Mpower is a facilities-based communications provider offering an integrated bundle of broadband data and voice communication services to business customers. Mpower delivers a full range of telephone, high-speed data, Internet access, and Web hosting solutions. Mpower is a super regional CLEC serving areas throughout California, Nevada, and Illinois. Mpower is a Nevada corporation with its headquarters located at 175 Sully's Trail, Ste. 300, Pittsford, NY 14534. Mpower, in turn, is a wholly owned subsidiary of Mpower Holding



Corporation, a Delaware corporation that is publicly traded on the American Stock Exchange under the symbol MPE.

### **III. DESCRIPTION OF THE TRANSACTION**

On October 21, 2004, ICG and Mpower, through its corporate affiliates, agreed to a transaction wherein substantially all of ICG's assets in California, including facilities, real estate, and customers, will be transferred to Mpower (the proposed "Transaction"). Under the terms of an Asset Purchase Agreement, Mpower will begin providing service to ICG's existing customers once appropriate regulatory authority to transfer the customers has been received.

Customers of ICG in California will be migrated to Mpower as soon as practicable. It is not anticipated that the migration to Mpower will result in any change in rates or terms of service to ICG's existing California customers. Customers will receive notice of the transaction.

As partial consideration for the proposed Transaction, ICG's existing parent company, MCCC ICG Holdings, LLC, will receive a minority ownership interest in Mpower's holding company. Detailed information about Mpower's post-transaction ownership structure is provided below.

### **IV. PUBLIC INTEREST CONSIDERATIONS**

Applicants respectfully submit that the proposed Transaction serves the public interest. In particular, Applicants submit that: (1) the proposed Transaction will not adversely affect Applicants' managerial or technical qualifications, and will enhance the financial qualifications of Applicants; (2) the proposed Transaction will benefit consumers in the U.S. telecommunications market by providing ICG's California customers with access to Mpower's super regional CLEC offerings, thus providing a greater variety of service options; and (3) the



proposed Transaction will assure that there is no disruption of service and will be virtually transparent to existing customers of ICG.

The proposed Transaction will not adversely affect Applicants' managerial or technical qualifications, and will enhance the financial qualifications of ICG and Mpower. As a result, the proposed Transaction is expected to be transparent to both the customers and the operations of ICG.

At the same time, however, the proposed Transaction will give ICG's remaining customers the added benefit that will come with ICG's increased capital position following the proposed Transaction. ICG will be better positioned to continue to compete against the larger, better-capitalized incumbent providers in its remaining markets. The proposed Transaction is, therefore, expected to invigorate competition and to help to ensure that customers continue to have a competitively active and financially viable alternative in the business communications marketplace. Because the proposed Transaction is expected to reduce ICG's impediments to growth and will provide ICG's California customers with a wider variety of telecommunications services, Applicants hope to complete the proposed Transaction as quickly as possible. Accordingly, Applicants respectfully request that the Commission expedite the processing of this Application and grant the requested authority as soon as possible.



**V. INFORMATION REQUIRED BY SECTION 63.24(e)**

Pursuant to Section 63.24(e) of the Commission's Rules, the Applicants submit the following information requested in Section 63.18 (a)-(d) and (h)-(p) in support of this Application:

**(a) Name, address and telephone number of each Applicant:**

Mpower Communications Corporation  
175 Sully's Trail, Ste. 300  
Pittsford, NY 14534  
(585) 218-6550 (Tel)  
(585) 218 6550 (Fax)

ICG Telecom Group, Inc.  
161 Inverness Drive West  
Englewood, CO 80112  
(303) 414-5000 (Tel)  
(303) 414 8805 (Fax)

**(b) Jurisdiction of Organizations:**

Mpower is a corporation formed under the laws of the State of Nevada.  
ICG is a corporation formed under the laws of the State of Colorado.

**(c) Correspondence concerning this Application should be sent to:**

Douglas D. Orvis II  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW, Suite 300  
Washington, DC 20007-5116  
(202) 945-6941 (Tel)  
(202) 424-7645 (Fax)  
DDOrvis@swidlaw.com (Email)

With a copy to:

Scott Beer  
General Counsel  
ICG Telecom Group, Inc.  
161 Inverness Drive West  
Englewood, CO 80112  
(303) 414-5906 (Tel)  
(303) 414 8805 (Fax)



- (d) Mpower and ICG each holds domestic and international Section 214 authority.
- (h) In accordance with 63.24(e)(2), items (h)-(p) are provided for the assignee only.
- 1) The following entities will own or control ten percent (10%) or more of the equity of Mpower Communications Corp.

Name: Mpower Holding Corporation  
Address: 175 Sully's Trail, Ste. 300  
Pittsford, NY 14534  
Citizenship: USA  
Percentage Owned: 100%  
Principal Business: Telecommunications

- 2) The following entities will own or control ten percent (10%) or more of the equity of Mpower Holding Corporation.

Name: MCCC ICG Holdings, LLC<sup>1</sup>  
Address: 161 Inverness Drive West  
Englewood, CO 80112  
Citizenship: USA  
Percentage Owned: 13.96%  
Principal Business: Telecommunications

Name: Western Highland Capital, Inc.  
Address: 300 Drakes Landing Rd., Ste. 290  
Greenbrae, CA 94904  
Citizenship: USA  
Percentage Owned: 11%  
Principal Business: Investments

Mpower does not have any interlocking directorates with a foreign carrier.

- (i) Mpower certifies that it is not a foreign carrier.
- (j) Mpower certifies that it does not seek to provide international telecommunications services to any destination country where:
  - (1) An Applicant (or an affiliate) is a foreign carrier in that country; or
  - (2) an Applicant (or an affiliate) controls a foreign carrier in that country; or

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<sup>1</sup> For further information on the ownership structure of MCCC ICG Holdings, LLC, please see Application filed July 21, 2004, WCB Docket 04-290, IB File No. ITC- t/c-20040721-00320. No other entity shall hold an effective 10% or greater interest in Mpower.



- (3) any entity that owns more than 25 percent of an Applicant, or that controls an Applicant, controls a foreign carrier in that country; or
- (4) two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25 percent of an Applicant and are parties to, or the beneficiaries of, a contractual relationship affecting the provision of marketing or international basic telecommunications services in the United States.
- (k) Not Applicable.
- (l) Not Applicable.
- (m) Not Applicable.
- (n) Mpower certifies that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.
- (o) Mpower certifies that it is not subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998. *See* 21 U.S.C. § 853a. *See also* 47 C.F.R. §§ 1.2001-1.2003.
- (p) Applicants respectfully submit that this Application is eligible for streamlined processing pursuant to Section 63.12(a)-(b) of the Commission's Rules, 47 C.F.R. §63.12(a)-(b). In particular, Section 63.12(c)(1) is inapplicable because none of the Applicants is affiliated with any foreign telecommunications carriers except for foreign telecommunications carriers that qualify for a presumption of non-dominance pursuant to Section 63.10(a)(3) of the Commission's Rules, and none of the scenarios outlined in Section 63.12(c)(2)-(4) of the Commission's Rules applies.

## **VI. INFORMATION REQUIRED BY SECTION 63.04**

In lieu of an attachment, pursuant to Commission Rule 63.04(b), 47 C.F.R. § 63.04(b) Applicants submit the following information in support of their request for domestic Section 214 authority in order to address the requirements set forth in Commission Rule 63.04(a)(6)-(12):

- (a)(6) A description of the proposed Transactions is set forth in **Section III** above.



- (a)(7) The majority of ICG's services are provided through ICG, although ICG has affiliated companies that provide services in other jurisdictions. Through ICG and its affiliated companies, ICG provides competitive local and/or long distance services in every state except Alaska and Iowa. ICG's core markets are located in Alabama, California, Colorado, Georgia, Kentucky, North Carolina, Ohio, Tennessee, and, through its subsidiary, Texas. ICG ChoiceCom, L.P. and ICG Telecom Group of Virginia, Inc. provide services only in Texas and Virginia, respectively. All of the services provided by ICG and its affiliates are competitive in nature and neither ICG nor any of its affiliates holds a dominant position in any market.

Mpower provides services in California, Nevada, and Illinois. In these three states, Mpower provides competitive local and/or long distance telecommunications services, as well as competitive access service. Mpower has no affiliated companies that provide telecommunications services. All of the services provided by Mpower are competitive in nature and neither Mpower nor any affiliated company holds a dominant position in any market.

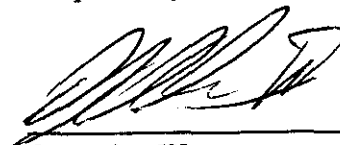
- (a)(8) Applicants respectfully submit that this Application is eligible for streamlined processing pursuant to Section 63.03 of the Commission's Rules, 47 C.F.R. §63.03. In particular, with respect to domestic authority, this Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) because, immediately following the Transactions: (1) Applicants and their affiliates (as defined in Section 3(1) of the Communications Act – "Affiliates") combined will hold less than a ten percent (10%) share of the interstate, interexchange market; (2) Applicants and their Affiliates will provide local exchange service only in areas served by dominant local exchange carriers (none of which are parties to the proposed Transactions); and (3) none of the Applicants or their Affiliates are dominant with respect to any telecommunications service.
- (a)(9) Through this Application, Applicants seek authority with respect to both international and domestic Section 214 authorizations (this Application is being separately and concurrently filed with respect to both types of authorities in compliance with Commission Rule 63.04(b), 47 C.F.R. § 63.04(b)).
- (a)(10) Prompt completion of the proposed Transaction is critical to ensuring that Applicants can obtain the benefits described in the foregoing Application. Accordingly, Applicants respectfully request that the Commission approve this Application expeditiously in order to allow Applicants to consummate the proposed Transaction as soon as possible.
- (a)(11) Not applicable.
- (a)(12) A statement showing how grant of the Application will serve the public interest, convenience, and necessity is provided in **Section IV** above.



VII. CONCLUSION

For the reasons stated above, Applicants respectfully submits that the public interest, convenience, and necessity would be furthered by a grant of this instant Application. The Applicants respectfully request expedited approval to permit the proposed Transaction described herein to be consummated consistent with the completion as soon as possible.

Respectfully submitted,



Catherine Wang  
Douglas D. Orvis II  
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Washington, DC 20007-5116  
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General Counsel  
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Dated: October 26, 2004

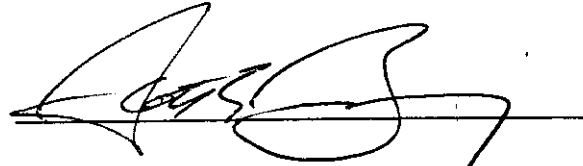


## **Verifications**



## VERIFICATION

I, Scott E. Beer, declare, under penalty of perjury, that I have read the foregoing Application and know the contents thereof; and that I certify that the same are true and correct to the best of my knowledge, information, and belief.

A handwritten signature in black ink, appearing to read 'Scott E. Beer', is written over a horizontal line.

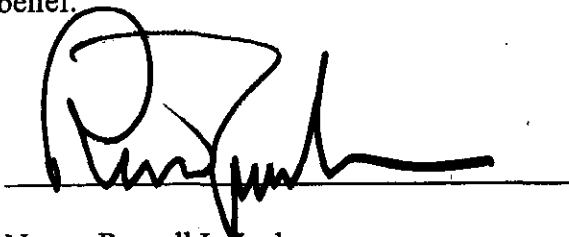
Name: Scott E. Beer  
Title: Vice President & General Counsel  
Company: ICG Communications, Inc./ICG  
Telecom Group, Inc.

Dated: October 25, 2004



## VERIFICATION

I, Russell I. Zuckerman, declare, under penalty of perjury, that I have read the foregoing Application and know the contents thereof; and that I certify that the same are true and correct to the best of my knowledge, information, and belief.

A handwritten signature in black ink, appearing to read 'Russell I. Zuckerman', is written over a horizontal line.

Name: Russell I. Zuckerman

Title: Senior Vice President and General Counsel

Company: Mpower Communications Corp.

Dated: October 25, 2004